



Attorney's Docket No. 043757-208385

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Braunstein et. al  
Serial No.: 09/490,019  
Filed: January 21, 2000  
For: PORTABLE HEALTH ASSISTANT

Confirmation No. 6604  
Group Art Unit: 3624  
Examiner: Jugdish Patel

November 26, 2003

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION UNDER 37 C.F.R. 1.131**

Sir:

We, Mark L. Braunstein and Stephen P. Miller, do hereby declare and state as follows:

1. We are the co-inventors of the invention described and claimed in the above-referenced patent application. We have reviewed the Office Actions mailed on September 24, 2002 and March 10, 2003 in regard to the above-referenced application. We have also reviewed U.S. Patent No. 6,024,699 to Surwit et al., which is relied upon by the Examiner as disclosing or suggesting the method of delivering health care through a portable health assistant recited in Claims 1-10, the computer-implementable method for providing health care under the supervision of a remote clinician of Claims 11 - 22, the computer-readable medium of Claim 23, the portable health assistant of Claim 24, and the portable health assistant system of Claim 25. This Declaration is filed to establish invention of the subject matter claimed in the currently amended claims of the present application prior to the March 13, 1998, filing date of the *Surwit et al.* patent.

2. Prior to March 13, 1998, we developed and implemented a portable health assistant. Our development of this portable health assistant ultimately led to the filing of the above-referenced patent application.

3. In support of the foregoing statement, we hereby submit, as attached Exhibit A, a copy of a System Pilot Agreement executed by Immanuel St. Joseph's - Mayo Health System and Patient Care Technologies, Inc. ("PtCT") (the company that we were associated with when we conceived and reduced the portable health assistant to practice). This System Pilot Agreement, which is formally titled "*Patient Care Technologies, Inc. - System Pilot*

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*Agreement*” memorializes an agreement between St. Joseph’s and PtCT under which PtCT agreed to provide to St. Joseph’s, for confidential, testing purposes only, the “well.at.home” Patient and Clinician applications that were described in PtCT’s then-current patient and clinician User’s Manuals. The execution date of this System Pilot Agreement has been redacted from Exhibit A, but it is prior to March 13, 1998.

4. In further support of the foregoing statement, we hereby submit, as attached Exhibits B and C, respectively, a draft clinician user manual and a draft patient user manual that were the current PtCT User Manuals at the time that the System Pilot Agreement of Exhibit A was executed by St. Joseph’s and PtCT. These User Manuals, which are referenced specifically in the System Pilot Agreement of Exhibit A, provide a detailed discussion of the portable health assistant and its various features. These documents were prepared prior to March 13, 1998.

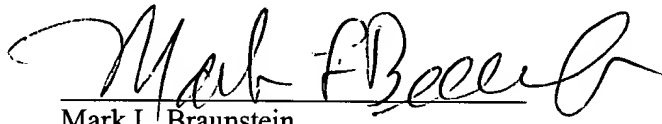
5. In further support of the foregoing statement, we hereby submit, as attached Exhibit D, dated excerpts from Mark L. Braunstein’s invention notebook. These excerpts detail various features of the portable health assistant. The dates on these excerpts have been redacted from enclosed Exhibit D, but all of these dates are prior to March 13, 1998.

6. In further support of the foregoing statement, we hereby submit, as attached Exhibit E, the Patient Care Technologies/Mayo Health System Patient Consent Form which was used during the PtCT confidential tests (referenced in Paragraph 3, above) at St. Joseph’s of the “well.at.home” Patient and Clinician applications that were described in PtCT’s then-current patient and clinician User’s Manuals (which are referenced in Paragraph 4, above). The execution date of this Patient Care Technologies/Mayo Health System Patient Consent Form has been redacted from Exhibit E, but it is prior to March 13, 1998.

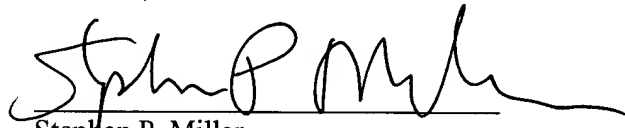
7. As requested by the Examiner, in further support of the foregoing statement, we hereby submit, as attached Exhibit F, a table presenting specific examples of documentary support, from Exhibits A-E, for the claims remaining in the present application.

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8. We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of United States Code and that such willful false statements may jeopardize the validity of the application or any corresponding U.S. patent.

  
Mark L. Braunstein

Date: 12/4/03

  
Stephen P. Miller

Date: 12/4/03

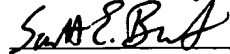
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Date of Deposit December 10, 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to:

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Scott E. Brient